Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

No. 107.

Brief of Starkel for Appellant.

Filed October 23, 1899.

Supreme Court of the United States.

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General No. 16936.

E. F. BLACK, Appellant,
vs.
WALTER P. JACKSON, Appellee.

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JOHN W. STARKEL,
AND S. H. HARRIS,
Attorneys for Appellant.

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The prayer of the petition is that the plaintiff have a mandatory injunction enjoining the defendant from entering upon or in any manner retaining possession of the said land so held by him. (See printed record, page 4, for copy of petition, with exhibits attached.)

The defendant answered to the petition, but by leave of court withdrew the same and filed a demurrer which contained the following, among other grounds: (1) "That the document termed 'an application for a mandatory injunction' does not state facts sufficient to constitute a cause of action (2) and that the court has no jurisdiction of the subject of the action sought to be presented herein." (See printed record, p. 7.) This demurrer was by the court overruled and an exception taken to this ruling. (See printed record, p 8.) There upon the defendant filed his amended answer admitting that the defendant had a prior entry or filing covering the entire tract of land in controversy; that the same had been held by the final action of the secretary of the interior for cancellation pursuant to the contest instituted against the same by the plaintiff upon the ground that the plaintiff was the prior settler. The answer charges that the lands in controversy constituted a part of the country known as the "Cherokee Outlet," opened to settlement on the 16th of September, 1893; that it

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